

Nonimmigrant Overstays: Brief Synthesis of the Issue

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Summary

As Congress debates comprehensive immigration reform and its component parts of immigration control (i.e., border security and interior enforcement), legal reform (i.e., temporary and permanent admissions), and the resolution of unauthorized alien residents, concerns arise over the capacity of the Department of Homeland Security (DHS) to identify and remove temporary aliens on nonimmigrant visas who fail to depart after their visas expire. It is estimated that each year hundreds of thousands of foreign nationals overstay their nonimmigrant visas or enter the country illegally (with fraudulent documents or bypassing immigration inspections). The most recent estimate (published in 2013) is that 11.7 million foreign nationals resided in the United States without authorization in 2012.

DHS does not have reliable data on emigration and nonimmigrant departures from the United States. As a consequence, reliable estimates of the number of nonimmigrant overstays are not available. Over the years, the overstay estimates ranged from 31% to 57% of the unauthorized population (depending on methodology). A 2013 study of visa overstays from 2000 to 2009 estimated that total nonimmigrant overstays to the United States dropped from 705,000 per year to 190,000 per year, or about 73%, over the decade. As of June 2013, the U.S. Government Accountability Office (GAO) reported that DHS's unmatched arrival-departure records totaled more than 1 million; however, the failure of DHS to consistently update the alien's record—for example, if the authorized period of admission is extended, if deferred departure is granted, or if the immigration status changes—is a major factor that prevents DHS from calculating reliable estimates of overstays.

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Background

Foreign nationals not legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted.¹ Under current law, two departments—the Department of State (DOS) and the Department of Homeland Security (DHS)—each play key roles in administering the law and policies on the admission of aliens.² DOS’s Bureau of Consular Affairs (Consular Affairs) is the agency responsible for issuing visas, DHS’s U.S. Citizenship and Immigration Services (USCIS) is charged with approving immigrant petitions, and DHS’s Customs and Border Protection (CBP) is tasked with inspecting all people who enter the United States. DHS’s Immigration and Customs Enforcement (ICE) is the lead agency on enforcing immigration law in the interior of the United States.³

As Congress debates comprehensive immigration reform and its component parts of immigration control (i.e., border security and interior enforcement), legal reform (i.e., temporary and permanent admissions), and the resolution of unauthorized alien residents, concerns arise over the capacity of the Department of Homeland Security to identify and remove temporary aliens who fail to depart when their visas expire. The phenomenon of foreign nationals who enter legally on a temporary basis and continue to stay after their visas expire is a fundamental problem of immigration control.⁴ This issue is not new; indeed, Congress has been grappling with options to address it over the past two decades.

In the early 1990s, policy makers became especially concerned about what was perceived to be a growing number of nonimmigrant overstays. At that time, nearly 2.7 million aliens had established legal status through the provisions of the Immigration Reform and Control Act (IRCA) of 1986 (P.L. 99-603)—a law which also significantly strengthened border and interior immigration enforcement provisions. Nonetheless, demographers at the former Immigration and Naturalization Service (INS) estimated that 3.5 million unauthorized aliens were residing in the United States in 1990. By 1996, the estimated number of unauthorized alien residents was 5.8 million, with about 2.1 million (41%) estimated to have overstayed their nonimmigrant visas. The remaining 59% were assumed to have entered the United States illegally.⁵

¹ Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of the Immigration and Nationality Act (INA) and the specific authority of the Visa Waiver Program in §217 of the INA.

² CRS Report R41093, *Visa Security Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

³ The U.S. Department of Justice Executive Office for Immigration Review (EOIR) has a significant policy role through its adjudicatory decisions on specific immigration cases. Other departments, notably the Department of Labor (DOL), and the Department of Agriculture (USDA), play roles in the approval process depending on the category or type of visa sought, and the Department of Health and Human Services (DHHS) sets policy on the health-related grounds for inadmissibility discussed below.

⁴ A nonimmigrant overstay is defined as when a foreign national who is legally admitted to the United States for a specific authorized period remains in the United States after that period expires, unless an extension or a change of status has been approved.

⁵ U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992*, unpublished paper by Robert Warren, 1994; and U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, by Robert Warren, 2003.

Recent estimates indicate that the unauthorized resident alien population (commonly referred to as *illegal aliens*) rose from 3.2 million in 1986 to 12.4 million in 2007, before leveling off at 11.7 million in 2012.⁶

Elements of Nonimmigrant Visa Control

Statutorily, the Immigration and Nationality Act (INA) provides the elements to control the entry and exit of foreign nationals. Provisions of law requiring electronic immigration databases and the collection of biometrics were enacted before the close of the 20th century. The INA makes clear that nonimmigrants who fail to leave under the terms of their visa become ineligible for readmission.⁷

Visa Issuance

There are two broad classes of aliens that are issued visas: immigrants and nonimmigrants. The documentary requirements for visas are stated in Section 222 of the INA. Nonimmigrants are admitted for a designated period of time and a specific purpose, and they include a wide range of visitors, including tourists, foreign students, diplomats, and temporary workers.⁸ In FY2012, the Bureau of Consular Affairs issued 8.9 million nonimmigrant visas. Combined, visitor visas issued for tourism and business comprised the largest group of nonimmigrants in FY2012, with about 7 million or 78%. Other notable categories were students and exchange visitors (10%) and employment-based nonimmigrants (6%).⁹

For well over a decade, the Bureau of Consular Affairs has been issuing machine-readable visas. Consular officers use the Consular Consolidated Database (CCD) to store data on visa applicants. Since February 2001, the CCD stores photographs of all visa applicants in electronic form, and more recently the CCD has begun storing ten-finger scans. In addition to indicating the outcome of any prior visa application of the alien in the CCD, the system links with other databases to flag problems that may affect the issuance of the visa. The CCD is the nexus for screening aliens for admissibility, notably screening on terrorist security and criminal grounds, and links with DHS's automated entry and exit data system, at the time the visa is issued.¹⁰

Many foreign visitors enter the United States without visas through the Visa Waiver Program (VWP), a provision of the INA that allows the visa requirements to be waived for aliens coming from countries that meet certain standards (e.g., Australia, France, Germany, Italy, Japan, New Zealand, and Switzerland).¹¹ In addition to the Visa Waiver Program, there are a number of exceptions to documentary requirements for a visa that have been established by law, treaty, or

⁶ CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem; and Jeffrey Passel, D'Vera Cohn, and Ana Gonzalez-Barrera, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed*, Pew Research Center, Washington, DC, September 23, 2013.

⁷ CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem

⁸ CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

⁹ Bureau of Consular Affairs, Report of the Visa Office 2012, U.S. Department of State, Table XVI(A), 2013, <http://travel.state.gov/content/visas/english/law-and-policy/statistics/annual-reports/report-of-the-visa-office-2012.html>.

¹⁰ CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem

¹¹ CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

regulation. The INA also authorizes the Attorney General (delegated to the DHS Secretary) and the Secretary of State acting jointly to waive the documentary requirements of INA Section 212(a)(7)(B)(i), including the passport requirement, on the basis of unforeseen emergency in individual cases.¹² In 2003, the Administration scaled back the circumstances in which the visa and passport requirements are waived.¹³

Border Inspections

The INA requires the inspection of all aliens who seek entry into the United States; possession of a visa or another form of travel document does not guarantee admission into the United States. As a result, all persons seeking admission to the United States must demonstrate to a CBP inspector that they are a foreign national with a valid visa and/or passport or that they are a U.S. citizen. In 2013, about 362 million travelers (citizens and non-citizens) entered the United States. There are 329 official ports of entry in the United States, including 15 preclearance offices in Canada, Ireland, and the Caribbean. Because many foreign nationals are permitted to enter the United States without visas, notably as discussed above through the VWP, border inspections are extremely important for those having their initial screening at the port of entry.

The Office of Biometric Identity Management—which has absorbed the former U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) system—requires certain foreign nationals to provide fingerprints, photographs, or other biometric identifiers upon arrival in the United States. The automated biometric entry-exit system grew from a photograph and two-finger biometric system for immigration identification¹⁴ to the major identity management and screening system for DHS. Entry-exit data are stored in two DHS databases: the Arrival and Departure Information System (ADIS) and the Automated Biometric Identification System (IDENT).¹⁵

Emigration and Exit Data

DHS does not have reliable data on persons who depart the country. Not only does DHS lack data on U.S. citizens and LPRs who move abroad, DHS does not have reliable data on nonimmigrants who exit the United States, despite statutory requirements to do so.¹⁶ The I-94 Arrival/Departure form was routinely collected from foreign nationals exiting at air and sea ports until CBP discontinued issuing the paper forms in 2013.¹⁷ CBP continues to rely on I-94 Arrival/Departure

¹² INA §212(d)(4)(A). The Homeland Security Act (P.L. 107-296) transferred most immigration-related functions from DOJ to DHS. Whether this waiver authority remains, in whole or in part, with DOJ and the Attorney General or with the Secretary of DHS is ambiguous.

¹³ For additional information about these exceptions, see 8 C.F.R. §212.1; 22 C.F.R. §41.1; and 22 C.F.R. §41.2.

¹⁴ DHS regulations exempted about 20 categories of individuals from providing biometric identifiers upon entry to or exit from the United State; however, the CBP inspector retains discretion to collect an alien's biometric information. CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa Seghetti and Stephen R. Vina.

¹⁵ ADIS is a biographic database because its records are populated by reading identity documents (name, date of birth, nationality, gender, passport number and country, U.S. visa number, and related information). IDENT is a fully biometric database that makes use of fingerprint scanners and digital cameras to collect physical data directly from database subjects, as well as biographic data (including name, aliases, date of birth, phone numbers, addresses, nationality, personal descriptive data), biometric identifiers (including fingerprints and photographs), and information about subjects' previous immigration enforcement histories (including previous immigration apprehensions and arrests). For more background, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

¹⁶ Most notably, §110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C).

¹⁷ In place of paper I-94 forms for exiting air and sea travelers, CBP relies on carrier exit manifests (passenger lists) to (continued...)

forms at land ports of entry. Several years ago, the U.S. Government Accountability Office (GAO) testified that there were several weaknesses collecting the I-94 Departure Record at land ports of entry. Most notably, GAO concluded that the collection of departure forms is vulnerable to manipulation—“in other words, visitors could make it appear that they had left when they had not. To illustrate, on bridges where toll collectors accept I-94 departure forms at the Southwestern border, a person departing the United States by land could hand in someone else’s I-94 form.”¹⁸

The exit component of the automated biometric entry-exit system has long been plagued with a variety of budgetary and structural problems, particularly at land ports of exit.¹⁹ In December 2006, DHS officials indicated that they were considering abandonment of plans to implement the exit portion.²⁰ In 2008, GAO also found weaknesses in the methodology DHS was proposing to use to verify departures of foreign nationals from the United States. GAO concluded that the plan to certify air exit system requirement would not address all potential risks of an expanded Visa Waiver Program. In that report, DHS stated that it would match foreign nationals’ departure records against prior records “to determine that the person is a foreign national, and that the person did depart the country through a U.S. airport.”²¹ A later GAO report on the automated biometric entry-exit system concluded that “an exit capability has yet to be fully deployed.”²²

Since 2004, DHS has tested six exit data pilot programs/demonstration projects. Four of the programs were discontinued for various reasons, such as those noted in the GAO reports discussed above. Two programs involving biographic information sharing with air carriers and with the government of Canada have been described by DHS as successful, and are ongoing.²³

Past Legislative Action on Nonimmigrant Overstays

Nonimmigrant overstays have been an issue in the debate over immigration control for many years. In 1981, the Select Commission on Immigration and Refugee Policy (SCIRP) cited nonimmigrant visa abuse and document control as concerns and included the establishment of a “fully automated system” to track nonimmigrant arrivals and departures from the United States among its recommendations to the President and the Congress.²⁴ This unanimous recommendation for an automated entry/exit system to monitor nonimmigrant overstays was part

(...continued)

confirm passenger departures. 78 *Federal Register* 18457.

¹⁸ U.S. General Accounting Office, *Homeland Security: Overstay Tracking Is a Key Component of a Layered Defense*, GAO-04-170T, October 16, 2003, <http://www.gao.gov/htext/d04170t.html>.

¹⁹ U.S. Government Accountability Office, *US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry*, GAO-07-248, December 2006, <http://www.gao.gov/new.items/d07248.pdf>.

²⁰ Then-DHS Assistant Secretary for Policy Stewart A. Baker said a land-border exit system would cost “tens of billions of dollars.” “It is a pretty daunting set of costs, both for the U.S. government and the economy,” Baker explained, “... when you have to sit down and compare all the good ideas people have developed against each other, with a limited budget, you have to make choices that are much harder.” Rachel L. Swarns and Eric Lipton, “U.S. Is Dropping Effort to Track if Visitors Leave,” *The New York Times*, December 15, 2006. Baker quote confirmed by Jarrod Agen, a spokesman for the Department of Homeland Security, December 15, 2006.

²¹ U.S. Government Accountability Office, *Limitations with Department of Homeland Security’s Plan to Verify Departure of Foreign Nationals*, GAO-08-458T, February 28, 2008, p. 9, <http://www.gao.gov/new.items/d08458t.pdf>.

²² U.S. Government Accountability Office, *Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, GAO-10-13, November 19, 2009, <http://www.gao.gov/new.items/d1013.pdf>.

²³ For further details, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

²⁴ Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest*, Staff Report, Washington, DC, April 30, 1981, p. xxxiii.

of a comprehensive set of proposals that SCIRP offered as part of its statutory mandate to evaluate the existing laws, policies and procedures governing the admission of immigrants and refugees to the United States.²⁵ In 1996, Congress put this recommendation into law; nonetheless, the issue of nonimmigrant overstays has remained a congressional concern.

Illegal Immigration Reform and Immigrant Responsibility Act

Congress strengthened the anti-terrorism provisions in the INA and passed provisions that many maintained would ramp up enforcement activities in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208, Division C). In IIRIRA, there were several provisions aimed at nonimmigrant overstays. Foremost, IIRIRA clarified that the visa of a nonimmigrant is void as soon as the nonimmigrant alien overstays the period of authorized stay. IIRIRA furthermore created new grounds of exclusion for aliens who are unlawfully present in the United States. Those who are unlawfully present for more than 180 days but less than one year and who voluntarily depart the country are ineligible for admission or reentry to the United States for three years. An alien unlawfully present for one year or more who leaves or is removed from the United States is inadmissible for 10 years. These provisions are generally referred to as the 3- and 10-year bars.

Finally, Section 110 of IIRIRA required the Attorney General to develop an automated entry/exit system that among other things (1) collects a record of departure for every alien departing the United States, and matches the record against the record of the alien's arrival in the United States; and (2) allows the identification, through online searches, of nonimmigrants who remain beyond their period of authorized stay. As amended by several subsequent laws, Section 110 of IIRIRA became the statutory basis of what is now the Office of Biometric Identity Management system, which uses biometric identification (i.e., finger scans and digital photographs) to check identity.

Enhanced Border Security and Visa Entry Reform Act of 2002

The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) expressly targeted the improvement of visa issuance and alien tracking procedures. Among its provisions, it required the development of an interoperable electronic data system to be used to share information relevant to alien admissibility and removability and the implementation of an integrated entry-exit data system.²⁶ It also required that all visas have biometric identifiers.²⁷ The act placed new requirements on the VWP, specifically mandating that the government of each VWP country certify that it has established a program to issue tamper-resistant, machine-readable passports with a biometric identifier. The act also required all VWP countries to certify that they report in a timely manner the theft of blank passports.

²⁵ P.L. 95-412 established the SCIRP, which was also referred to as the Hesburgh Commission because it was chaired by the Reverend Father Theodore M. Hesburgh, who was President of Notre Dame at the time.

²⁶ §414 of the USA PATRIOT Act (P.L. 107-56) also encouraged the full implementation of the integrated, automated entry and exit data system "with all deliberate speed and as expeditiously as practicable."

²⁷ The Border Security and Visa Reform Act also required the establishment of electronic means to monitor and verify the status of the students and exchange visitors. CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

Legislation Implementing the 9/11 Commission Recommendations

The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (P.L. 108-458) included visa policy and immigration-related provisions aimed at curbing nonimmigrant overstays as well as the specific recommendations offered by the 9/11 Commission. The IRTPA required accelerated deployment of the biometric entry and exit system to process or contain certain data on aliens and their physical characteristics. The act also expanded the pre-inspection program that places U.S. immigration inspectors at foreign airports, increasing the number of foreign airports where travelers would be pre-inspected before departure to the United States. Moreover, it required all individuals entering the United States (including U.S. citizens and visitors from Canada and other Western Hemisphere countries) to bear a passport or other documents sufficient to denote citizenship and identity. The IRTPA required the establishment of new standards aimed at ensuring the integrity for federal use of birth certificates, state-issued driver's licenses and identification cards, and social security cards.²⁸

The Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) created a waiver allowing the Secretary of Homeland Security (Secretary) to admit countries with visa refusal rates under 10% to the VWP. This waiver authority became available in October 2008, when the Secretary certified that (1) an air exit system was in place that verifies the departure of not less than 97% of foreign nationals that exit through U.S. airports, and (2) the electronic system for travel authorization (ESTA) was operational. The ESTA is a system through which each foreign national electronically provides, in advance of travel, the biographical information necessary to check the relevant databases and "watch lists" to see whether the foreign national poses a law enforcement or security risk.²⁹ The CBP officer makes a determination on whether the nonimmigrant may enter the United States and the permitted duration of stay.

Estimating Overstays

Over the years, it became apparent that the data on nonimmigrant overstays were unreliable because these data were based upon the I-94 Arrival/Departure form. The I-94 forms are no longer collected from foreign nationals at air and sea ports, and the integrity of the I-94 collection process at land ports is problematic, as discussed above. Moreover, two major classes of nonimmigrants are exempt from filling out the I-94 when visiting the United States for business or pleasure: Canadian citizens admitted for up to six months and Mexican citizens entering with a border crossing card (laser visa) along the southwestern border who intend to limit their stay to less than 30 days and intend not to travel beyond a set perimeter from the border.

²⁸ CRS Report RL32616, *9/11 Commission: Legislative Action Concerning U.S. Immigration Law and Policy in the 108th Congress*, by Michael John Garcia and Ruth Ellen Wasem.

²⁹ Section 711(h)(3) of P.L. 110-53 provides: "A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States." That subsection further provides: "A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa."

Early Demographic Estimates

In 1996, the estimated number of unauthorized alien residents was 5.8 million, with about 2.1 million (41%) estimated to have overstayed their nonimmigrant visas.³⁰ Robert Warren, then a demographer with the former INS, attempted to calculate nonimmigrant overstays based on estimations of the percentage overstays for each country. Warren's efforts yielded an estimate that 2.3 million, or 33%, of the 7.0 million unauthorized immigrants residing in the United States in January 2000 were nonimmigrant overstays.³¹ In 2004, the U.S. Government Accountability Office (GAO) attempted to estimate nonimmigrant overstays using samples based upon three different methodologies. GAO concluded, "three alternative data sources on illegal immigrants indicate varying—but uniformly substantial—percentages of overstays: 31%, 27%, and 57%."³²

In 2003, Warren reached the following conclusion: "In general, the net nonimmigrant overstay figures are more likely to be overestimates than underestimates because the collection of departure forms for long-term overstays who depart probably is less complete than for those who depart within the first year."³³ The 2004 GAO study, however, drew two different conclusions: "The extent of overstaying is significant and may be understated by DHS's most recent estimate."³⁴

In 2006, the Pew Hispanic Center applied the Robert Warren methodology (with some modifications) to their estimates of the unauthorized resident alien population in 2006. Their estimates suggest that out of an unauthorized resident alien population of 11.5 million to 12 million, about 4 million to 5.5 million, or between 33% and 50%, are nonimmigrant overstays.³⁵

Administrative Estimates

For immigration enforcement purposes, ICE's Overstay Analysis Unit identifies foreign nationals who have potentially overstayed their visas by matching ADIS arrival and departure records. DHS had a backlog of 1.6 million unmatched arrival records that had not been reviewed through automated or manual processes in January 2011. GAO reviewed the enhanced biographic exit program's backlog of 1.6 million potential overstay records and found that about half of these cases (863,000) were found to have departed the United States or to have adjusted status.³⁶ As of June 2013, GAO reported that DHS's unmatched arrival records totaled more than 1 million.³⁷

³⁰ U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992*, unpublished paper by Robert Warren, 1994; and U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, by Robert Warren, 2003.

³¹ U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, by Robert Warren, 2003 (hereinafter, *Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*).

³² U.S. Government Accountability Office, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82, May 2004 (hereinafter, *Overstay Tracking*, GAO-04-82).

³³ *Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*.

³⁴ *Overstay Tracking*, GAO-04-82.

³⁵ Pew Hispanic Center, Fact Sheet, *Modes of Entry for the Unauthorized Migrant Population*, May 22, 2006.

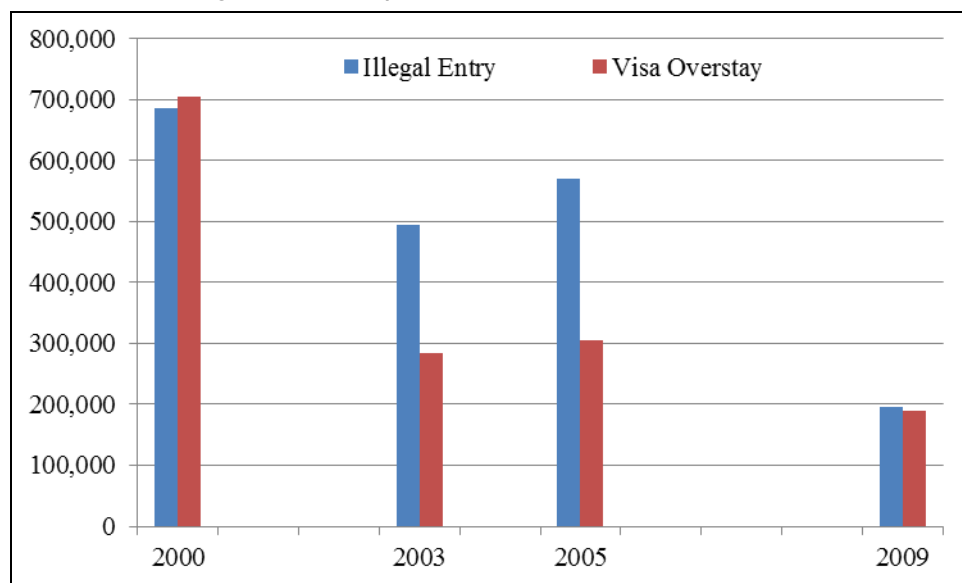
³⁶ Out of the remaining records, along with 82,000 additional cases identified by ICE's Counterterrorism and Criminal Exploitation Unit, DHS prioritized 1,901 as possible national security or public safety risks. Further investigation of these high priority cases found that 1,013 individuals had departed the United States or adjusted to a lawful migration status, 9 individuals were arrested, and 481 individuals were the subject of ongoing ICE enforcement efforts as of March 2013, among other outcomes. U.S. Government Accountability Office, *Overstay Enforcement: Additional* (continued...)

Recent Demographic Estimates

Most recently, Robert Warren and John Robert Warren published two new analyses of the components of unauthorized migration (using a few refinements to Robert Warren's earlier methodology) and estimated a sharp drop in the number of unauthorized aliens arriving in the United States annually since 2001. In terms of visa overstays, the latest findings of Warren and Warren are stunning in that they concluded that "total nonimmigrant overstays to the United States dropped from 705,000 to 190,000, or about 73%, over the decade" (ranging from 2000 to 2009). Warren and Warren also found that entries without inspections (EWIs) declined in every year after 2005, not just during the economic recession in 2008 and 2009 as other research had suggested.³⁸

Figure 1. Estimated Annual Trends in Visa Overstays in the United States

Immigration Status by Selected Year of Arrival, 2000 to 2009



Source: Robert Warren and John Robert Warren, "A Review of the Declining Numbers of Visa Overstays in the U.S. from 2000 to 2009," Center for Migration Studies, 2013, Figure 1.

It is essential, however, to emphasize that their work is only estimations based upon broader population trends. As the authors acknowledge: "(N)o direct information is available about either EWIs or overstays." If foreign nationals who are in the country illegally are effectively avoiding census enumeration, then it would impact these analyses. These estimates are not a match for official entry-exit data.

(...continued)

Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program, 13-683, July 2013.

³⁷ . U.S. Government Accountability Office, *Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program*, 13-683, July 2013.

³⁸ Robert Warren and John Robert Warren, "Unauthorized Immigration to the United States: Annual Estimates and Components of Change, by State, 1990 to 2010," *International Migration Review*, vol. 47, no. 2 (June 2013), pp. 296-329; and Robert Warren and John Robert Warren, "A Review of the Declining Numbers of Visa Overstays in the U.S. from 2000 to 2009," Center for Migration Studies, 2013.

Concluding Comments

Estimates of nonimmigrant overstays residing in the United States are plagued by the broader difficulties in measuring all three components of unauthorized migration—aliens entering without inspection between ports of entry and aliens entering with fraudulent documents, as well as aliens overstaying or otherwise violating the terms of legal entry. The extent that some nonimmigrant overstays become “quasi-legal” aliens (e.g., those who have legal permanent resident petitions pending or have sought relief from removal from an immigration judge) further complicate the estimates.³⁹ Reportedly, the failure of DHS to consistently update the alien’s record—for example if the authorized period of admission is extended, if deferred departure is granted, or if the immigration status changes—is another major factor that prevents DHS from calculating reliable estimates of overstays.⁴⁰

A way forward on the issue of nonimmigrant overstays seems out of reach, absent a reliable method to measure emigration or an effective exit-monitoring system.

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Acknowledgments

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³⁹ *Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*.

⁴⁰ *Overstay Tracking*, GAO-04-82.